IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7903 of 1999

with

FIRST APPEAL No 7909 of 1999

with
Cross Objections Nos. 9 of 2000 to 14 of 2000
in
First Appeals Nos.7903 of 1999 to 7908 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT INDUSTRIAL DEVELOPMENTCORP.

Versus

ASHOKKUMAR JAYANTILAL JATAKIA

Appearance:
MR MB GANDHI for appellant
Mr.Y.S. Lakhani, with
MR DP KINARIWALA for the respondent-claimants.

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 10/05/2000

COMMON ORAL JUDGMENT (Per: Kadri, J.)

1. Appellant, Gujarat Industrial Development Corporation, has filed First Appeals Nos.7903 of 1999 to 7909 of 1999 under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated July 31, 1999, rendered by the learned 4th Extra Assistant Judge, Rajkot District, at Gondal, in Land Reference Cases Nos. 320 of 1986 to 323 of 1986, 328 of 1986, and 4 of 1987. Original claimants-respondents have filed Cross Objections Nos.9 of 2000 to 14 of 2000 First Appeals Nos.7903 of 1999 to 7908 of 1999 under Order 41 Rule 22 of the Code of Criminal Procedure, against the same common judgment and award for enhancement of compensation of acquired lands situated at Gondal at the rate of Rs.60/- per sq.mtr. As common question of facts and law arise for our consideration, we propose to dispose of all the appeals and the cross objections, by this common order.

2. Agricultural lands belonging to the respondents-claimants situated at village Jamvadi, Taluka: Gondal, came to be acquired for the public purpose of development of industrial area, near town Gondal, District Rajkot, by notification issued under Section 4(1) of the Act which was published in the government gazette on August 20, 1981. After following procedure prescribed under the Act, declaration under Section 6 of the Act came to be published in the government gazette on May 22, 1984. The persons interested claimants of the agricultural lands of village Jamvadi were served with notices under Section 9(3)(4) of the Act. The claimants of the acquired lands lodged their claim before the Land Acquisition Officer claiming compensation of the acquired lands, superstructure, trees, etc. The Land Acquisition Officer, on the basis of materials placed before him, made his award on August 5, 1985, and offered compensation of the acquired lands situated on the outskirts of town Gondal at the rate of Rs.5.50/- per sq.mtr for acquired lands bearing Survey Nos. 55/1, 55/2, 56/1, and Rs.6 per sq.mtr for acquired lands bearing Survey No.52/1 and 53/1. The claimants were of the opinion that, looking to the fertility, situation and development of the acquired lands,

compensation offered by the Land Acquisition Officer was inadequate and, therefore, they filed written applications under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court for determination of the market value of the acquired lands. The said applications were referred by the Land Acquisition Officer to the District Court, Rajkot, which came to be numbered as Land Acquisition Cases Nos.320/86 to 323/86, 328/86, 4/87 and 5/87. It was contended by the claimants in their applications for enhancement of compensation that market price offered by the Land Acquisition Officer was inadequate and the Land Acquisition Officer had ignored prevailing market price of acquired lands at the relevant time. It was contended that the lands under acquisition were having great potentiality and fertility. According to the claimants, because of development in town Gondal, and due to acquisition of lands for various public purposes, market price of the land had increased which fact was ignored by the Land Acquisition Officer and, therefore, the compensation offered by him was grossly inadequate. Before the Reference Court, the claimants claimed compensation at the rate of Rs.1 lakh per Acre for acquired lands.

3. The claim applications filed by the claimants were contested by the Land Acquisition Officer and the acquiring body, GujaratR

Corporation, by filing their common reply, inter alia, contending that compensation offered by the Land Acquisition Officer was just and adequate and the Land Acquisition Officer had taken into consideration prevailing rate of market price as on the date of the notification. It was averred that the land was situated at a distance of 3 kms from town Gondal and, hence, compensation claimed by the claimants was highly excessive and, therefore, the applications be dismissed.

4. The claimants, to substantiate their claim of enhanced compensation, examined (i) Harish Jayantilal Zatakiya, Exh.73 and (ii) Mansukhlal Keshavjibhai Jivani, Exh.108. The claimants produced following documentary evidence.

Exh.61	Map of Jamwadi sim prepared by the District Inspector of Land Records, Rajkot.
Exh.62	Map showing extension of boundaries of Gondal Municipality

Exh.63 Map prepared by Shivlal Rathod mentioning lands of various sale deeds and their situation.

Exh.73 Certified copy of previous award rendered in Land Acquisition Case Nos. 15/79 and 16/79 in respect of acquired lands of Survey Nos.417 and 419/1 of Gondal which was acquired for public purpose of construction of residential blocks by Gujarat Housing Board.

Exh.75 Sale deed in favour of Patel Dhanji Devji, dated May 17,1980.

Exh.83 Certificate given by the Gram Panchayat, Jamwadi, regarding sale instance of Mohan Devji, indicating that the pric.R

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Exh.84 Copy of daily newspaper 'Phoolchhab' indicating price of land of Jamwadi Industrial Area at Rs.55 to Rs.70 per sq.mtr.

Exh.85, 86,87 Village Form 7/12 of Survey No.55

Exh.88 Order of District Collector to Anandrai Kandalal Thaker to pay premium for N.A. permission obtained in respect of agricultural lands of Survey No.51.

Exh.109 to114 Sale deed of agricultural lands of village Jamwadi.

The appellants examined following witnesses

Sr. No.	Name	Exh.
1.	Amarsinh Julibhai Chauhan Surveyor of GIDC	27
2.	Janakkumar Ganpatbhai Gamit Executive Engineer, GIDC	143
3.	Dhirajlal Harjibhai	155
4.	Mankarlal Ramjibhai	157

5. Savjibhai Harjibhai 159
6. Samboobhai Gandabhai Kotadiya 160
7. Chauhanbhai Bhagwanjibhai Viradiya 164
8. Babubhai Vallabhbhai Kachhdiya 167
9. Kamlesh Mohan Bavishi
Assistant Engineer, GIDC 174
10. Jayantkumar Chaturbhai Patel
of GIDC, Ahmedabad 190
11. Chhatrabuchbhai Premjibhai Patel 203
Valuer of GIDC
12. Bharatbhai Renikbhai Rawal
Surveyor, GIDC 205
13. Chhaganbhai Jivabhai Amrutiya 208

The appellant produced voluminous documentary evidence consisting of

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1. Map regarding acquired and surrounding
lands Exh.26
2. Letter indicating rates of lands
allotted by GIDC Exh.31
3. Sale Deeds Exh.92 to
Exh.105
4. Allotment letter indicating
price per sq.mtr at Rs.55 Exh.132
5. Statement of account showing cost
of developing acquired area Exh.197
6. Statement regarding allotment
of plots in GIDC area Exh.148
7. Statement of allotment of plots
in GIDC from No.II Exh.149
8. Map of development of
Industrial Area II of Gondal Exh.146
9. Sale deeds Exh.157
158, 169,
170
10. Valuation report of
superstructure on
the acquired lands Exh.176
11. Enquiry report Exh.177
12. Detailed measurements of
structured on acquired land Exh.178
13. Sketch showing lands sold
under different sale deeds Exh.182
14. Estimate of water tank Exh.184
15. Statement of Bipinchandra

Jayantilal Jatakar Exh.192
16. Statement of Karsanbhai
Purshottambhai Exh.194
17. Report of GIDC regarding
development of acquired area Exh.197
18. Inspection report for
developing acquired land Exh.198
19. Report of acquisition
of land Exh.199
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5. The Reference Court, on overall appreciation of abovereferred to evidence led by the parties, deduced that acquired lands were having vast frontage and were situated on southeast direction of Rajkot-Probandar National Highway. The Reference Court further deduced that the government land was situated in between acquired lands and the National Highway and,therefore, the lands were having building potentiality. The Reference Court further deduced that all the acquired lands were levelled agricultural lands and, therefore, GIDC will have to incur less cost for developing acquired lands. The Reference Court discarded sale instance of plot which was auctioned and sold for residential purpose on the ground that it was not a genuine sale. The Reference Court totally ignored sale deed which was covering small extent of area on the ground that sale deed of small area was not relevant to determine market value of big parcel of lands. For the purpose of determination of market value of present acquired lands, the Reference Court relied upon sale of government kharaba land which was sold to GIDC for Rs.12.50 ps per sq.mtr. The Reference Court multiplied the price of kharaba land by 2.1/2 times to arrive at the market value of present acquired lands. The government kharaba land was sold at Rs.12.50 ps per sq.mtr and multiplying the said price by 2.1/2 times, the Reference Court deduced that market value of present acquired land would be Rs.31.25 ps per sq.mtr. The Reference Court also extended benefits under Sections 23(1-A) and 23(2) of the Act and interest under Section 28 of the Act. The Reference Court rejected claimants' claim for enhanced compensation for trees, wells, pipelines, water tank, etc. Determination of market value at the rate of Rs.31.25 ps per sq.mtr is challenged by the appellants by filing appeals as referred to above, whereas, the respondents have filed cross objections claiming enhanced compensation at the rate of Rs.60.00 per sq.mtr.

6. Learned counsel for the parties have taken us through entire record and proceedings produced before the

Reference Court. Learned counsel for the appellant has also supplied paper book consisting of oral as well as important documentary evidence for the purpose of deciding these appeals.

7. Learned counsel, Mr. M.B. Gandhi, appearing for the appellant, submitted that the sale deeds produced by the appellant at Exh.92 to 105 were most relevant and comparable for the purpose of determination of market value of present acquired lands. Learned counsel for the appellant submitted that the determination of market value of the reference Court was highly excessive in view of the fact that the sale deed Exh.92 to 105 were in respect of comparable lands which was ignored by the reference Court. Learned counsel for the appellant further submitted that map Exh.63 produced by the appellant indicated that acquired lands were agricultural lands and situated far away from development area of town Gondal. Learned counsel for the appellant further submitted that determination of market value of acquired lands by making base on the sale of kharaba land and multiplied by 2.1/2 times was purely based on conjectures and guess work. Learned counsel for the appellant further submitted that the Reference Court has erred in taking into consideration kharaba lands and multiplying it 2.1/2 times for determination of market value of lands in question and, therefore, the appeals deserve to be allowed.

8. Learned counsel for the respondents, Mr. Y.S. Lakhani, vehemently submitted that sale deed relied upon by the appellants at Exh.92 to 105 were rightly discarded by the Reference Court as those sale deeds were not genuine sale deeds and vendor and vendee examined by the appellant have admitted that those sale deeds were not between the willing vendor and willing vendee. Learned counsel for the respondents further submitted that the witnesses examined by the appellant had admitted that there is difference of five times between price of agricultural lands and kharaba lands. Learned counsel for the respondents therefore submitted that, when kharaba land was sold at Rs.12.50 ps per sq.mtr. value of agricultural lands by multiplying into five would be more than Rs.60/per sq.mtr and, therefore, the claim of the respondents for acquired lands at the rate of Rs.60/- per sq.mtr is just and adequate and, therefore, the appeals filed by the GIDC be dismissed and cross objections filed by the respondents should be allowed.

9. Claimant, Harish Jayantilal Jadakiya, Exh.73, deposed that acquired lands were situated in the sim of Jamwadi which is situated on the outskirts of town Gondal.

He claimed that, near acquired land, industrial activity had already started and acquired lands were near developed area of town Gondal. He deposed that in kharaba lands surrounding the acquired lands, many petrol pumps and hotels were established since last 40 years and they were provided with electricity connection. He claimed that, in Jamwadi area, there was scarcity of lands. He stated that, in the year 1979 to 1981, gram panchayat of village Jamwadi had sold by public auction plots for residential purpose at the rate of Rs.48.25 ps per sq.mtr. He further stated that lands of Survey No.417 and 419/1 of town Gondal were acquired in the year 1972 by the Gujarat Housing board wherein the claimants had filed Land Acquisition Case No.15 of 1979 and 16 of 1979 claiming enhanced compensation and the Reference Court had determined market value of acquired lands of town Gondal at the rate of Rs.30/- per sq.mtr. for the acquisition of September 1972. In cross examination, the witness admitted that population of Jamwadi was 2500 in the year 1980-81 and at that time no industries were established near village Jamwadi. He denied that agricultural lands of village Jamwadi were inferior in quality. He admitted that, prior to five years of acquisition, they had stopped cultivating acquired lands and all his brothers had started construction/real-estate business. In cross examination, the witness admitted that no industries were established between the lands acquired for Gujarat Housing Board and present acquired lands. The witness, during his deposition, produced certificate at Exh.86 issued by Janwadi Gram Panchayat indicating that 117 sq.mtrs of land of village site (gamtal) of village Jamwadi was sold to Mohan Devji on Jun 5, 1981 by public auction for residential purpose at the rate of Rs.48.25 ps per sq.mtr. The witness also produced previous award in respect of acquired lands of town Gondal for public purpose of construction of residential quarters by Gujarat Housing Board at Exh.74 rendered in Land Acquisition Cases Nos. 15 and 16 of 1979.

10. Claimants' witness Mansukhlal Keshavji Jivani, Exh.108, deposed that he along with 23 other persons had purchased land bearing Survey No.476 of town Gondal by three different sale deed in the year 1980 for Rs.1 lakh per one Acre. He deposed that, when they purchased lands of sale deeds, no development had taken place near the lands, which were purchased by them. The witness produced sale deed, by which, the lands were purchased by him, at Exh.109 to 114. The witness admitted in cross examination that they had purchased lands under sale deed Exh.109 to 114 for construction of residential houses. It is denied

that they had purchased land at exorbitant price as they were in need of lands for construction of their houses. He admitted that the lands, which were purchased by them, were situated in village site Gondal.

11. The map produced by the claimants at Exh.162 indicates that acquired lands were situated at a distance of 7 to 8 kms away from Gondal town. On the date of acquisition, no much development had taken place near acquired lands. Even though the claimants had stopped cultivating acquired lands prior to five years of the date of acquisition, they had not sought for permission to convert agricultural lands into non-agricultural use. This indicates that acquired lands were not situated in the developing area. However, one thing becomes clear from the map that acquired lands were situated on the National Highway and were having vast frontage. Sale deeds relied upon by the claimant at Exh.109 to 114 cannot be called comparable for determination of market value of present acquired lands as lands of sale deed Exh.109 to 114 was situated in the village site of Gondal and it related to small parcels of land . Village site of Gondal was far away from acquired lands therefore, the said sale deeds are not at all relevant and comparable for the purpose of determination of market price of the acquired lands. Plot of land admeasured approximately 117 sq.mtr sold by public auction was also in respect of village site land at Jamwadi at the rate of Rs.48.25 ps on June 5, 1981 also cannot be made basis for determination of market value of the present acquired lands as the said sale cannot be called a genuine sale instance. Lands which were sold by public auction, in our opinion, cannot reflect the correct market price prevailing on the date of acquisition. Furthermore, lands, which were sold by public auction, on June 5, 1981 were in respect of small parcel of land as compared to present acquired lands which are covering a vast area of 19 Hectare 3 Are and 74 sq.mtr.

12. The Acquiring Body-appellant examined many witnesses and produced sale instances at Exh.92 to 105 which indicate that at the relevant time market price of agricultural lands in surrounding area of the acquired lands was ranging from Rs.10 to Rs.12 per sq.mtr. Vendor and Vendee of documents Exh.92 to 105 proved execution of above sale deeds but in cross examination they admitted that because of financial constrains they were compelled to sell their agricultural lands. Therefore, we are of the opinion that the documents, on which the acquiring body sought to place reliance for the purpose of determination of market price of acquired lands cannot be

relied upon as the said sale instances were not between willing buyer and wiling purchaser.

13. Reference Court for the purpose of determination of market price of acquired lands had placed reliance on sale of acquired big plot of land admeasuring 38 Acres bearing Survey No.378 which was kharaba land and the Government had allotted the said land to the GIDC for establishment of industrial estate. The Government allotted kharaba land bearing Survey No.378 to the GIDC in the year 1979. Deputy Town Planner, Rajkot, had fixed its market value at the rate of Rs.12.50 ps per sq.mtr. The Reference Court had multiplied the said amount of kharaba land at 2.1/2 times and determined market value of present acquired land at the rate of Rs.31.25 ps. Learned counsel for the respondents-claimants has vehemently submitted that the witnesses examined by the appellant at Exh.157 to Exh.159 had admitted in their cross examination that price of agricultural land is four to five times higher than the price of kharaba land. It is, therefore, argued by the learned counsel for the claimants that when kharaba land was sold to the GIDC at the rate of rs.12.50 ps per sq.mtr, then the present claimants should be awarded five times more, i.e. Rs.12.50 x 5 = Rs.62.50 ps per sq.mtr. In our opinion, it is not a proper method to give five time more value of kharaba land for arriving at correct market value of agricultural lands It is true that kharaba land, which was allotted to the GIDC was just adjacent to present acquired lands. But, in our opinion, determination of market value of present acquired lands cannot be determined by giving five times more than the price of kharaba land. In our opinion, determination of market price of agricultural land on the basis of price of government kharaba land by multiplying it by 2.1/2 times is not proper method which was adopted by the Reference Court.

14. Agricultural lands bearing Survey No.417 and 419/1 of Gondal town admeasuring 3 Acre 82 Are 41 sq.mtr came to be acquired by the Gujarat Housing Board for constructing houses of middle class persons by issuance of notification under Section 4(1) of the Act on September 2, 1972. The Land Acquisition Officer had offered compensation of the above lands at the rate of Rs.9.50 per sq.mt in respect of land bearing Survey No.417 and Rs.12 per sq.mtr in respect of land bearing Survey No.419/1. The claimants of those acquired lands had filed reference applications under Section 18 of the Act before the District Court, Rajkot, which came to be decided by learned Extra Assistant Judge, Rajkot, at Gondal, who, by judgment and award dated November 22, 1984, had determined

market value of those acquired lands at the rate of Rs.30/- per sq.mtr as on September 2, 1972. Certified copy of judgment and award of the Reference Court rendered in Land Acquisition Cases Nos.15 of 1979 and 16 of 1979 was produced at Exh.74 on the record of the Reference Court and the previous award Exh.74 in respect of lands acquired for the purpose of construction of flats by the Gujarat Housing Board, though situated within limits of town Gondal, is relevant for the purpose of determination of market value of the present acquired lands. Claimant, Harish Jayantilal Zatakiya, Exh.73, deposed that boundary of village Jamwadi was just adjoining to boundary of town Gondal. He deposed that municipal area of Gondal was touching GEB Power Station and the present acquired lands is at a distance of 1/2 km from GEB Power station. He further deposed that lands acquired were at a distance of 1 kms from the limits of Gondal Nagarpalika.

15. Evidence of acquiring body witness No.1, Amarsinh Julibhai Chauhan, who was serving as Surveyor of GIDC at Exh.27, indicates that lands which were acquired for the purpose of Gujarat Housing Board was approximately at a distance of 2 or 2.1/2. kms from the present acquired lands. It is not brought to the knowledge of this Court that previous award Exh.74 which was in respect of acquired lands for the purpose of Gujarat Housing Board was challenged in the higher forum. In our opinion, previous award Exh.74, which was in respect of lands situated within limits of town Gondal, can be replied upon for the purpose of determination of market value of the present acquired lands. Though the present acquired lands were beyond the limits of Gondal Nagarpalika, the same were touching the boundaries of the Nagarpalika. The claimants witness had described that many industries and petrol pump and hotels were established on the lands touching the Highway. The present acquired lands were abutting the National Highway which is an admitted fact. The lands, which were acquired for the Gujarat Housing Board, were nearly 3 Hectare and 82 Are whereas the area of the present acquired lands is 19 Hectare 63 Are 74 sq.mtr. The lands for the Housing Board were acquired in September 1972, whereas notification of the present acquired lands was issued on August 20, 1981. Thus, there was gap of more than nine years between issuance of two notifications. Looking to the development, which was taking place near and surrounding limits of Gondal Nagarpalika, rise in price of 10% every year can be adopted to determine correct market value of acquired lands in the year 1981. If rise in price of 10% every year is adopted, market value of acquired lands in 1981 would be Rs.57 per sq.mtr. (Rs.30 plus (30x10%x9) Rs.27 =

Rs.57.00). Bearing in mind the area of present acquired lands and area of acquired lands for Gujarat Housing Board, and looking to the distance between the two lands, and looking to the fact that the lands acquired for the Gujarat Housing Board were situated within city limits of Gondal, it would be just and proper to deduct Rs.28.50. i.e. 50%, from the amount of Rs.57.00 (Rs.57 minus Rs.28.50= Rs.28.50). The market value of acquired lands of village Jamwadi as on August 29, 1981 would be Rs. 28.50 which is rounded of to Rs.29.00 per sq.mtr. Determination of market value by the Reference Court for the present acquired lands of village Jamwadi is modified to the extent that the market value on the relevant date would Rs.29.00/- per sq.mtr. in stead of Rs.31.25 per sq.mtr. The claimants would be entitled to statutory benefits under Sections 23(1-A) and 23(2) and interest under Section 28 of the Act.

16. As a result of foregoing reasons, Appeals Nos.7903 of 1999 to 7909 of 1999 filed by the Gujarat Industrial Development Corporation, are partly allowed. It is held that the market value of the acquired lands of village Jamwadi on the relevant date was Rs.29.00 per sq.mtr. The common judgment and award dated July 31, 1999, rendered by the learned 4th Extra Assistant Judge, Rajkot District, at Gondal, in Land Reference Cases Nos. 320 of 1986 to 323 of 1986, 328 of 1986, and 4 of 1987 is modified to the aforesaid extent. The claimants are entitled to all the statutory benefits under Sections 23(2) and 23(1-A) and interest under Section 28 of the Act. However, it is clarified that the claimants would not be entitled to interest on the amount of solatium payable under Section 23(2) as well as on the amount under Section 23(1-A) of the Act, in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

17. Cross Objections Nos.9 of 2000 to 14 of 2000 in First Appeals Nos.7903 of 1999 to 7908 of 1999 are dismissed. There shall be no order as to costs. ****

(swamy)